

Planning Commission Date: January 14, 2004

Item No.

**\*7**

## **MILPITAS PLANNING COMMISSION AGENDA REPORT**

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Category: Public Hearing

Report prepared by: Staci Pereira

Public Hearing: Yes:   X   No:       

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**TITLE:** **USE PERMIT NO. UP2003-53**

Proposal: A request to permit an existing legal non-conforming restaurant, Taqueria Las Vegas, with 28 seats (20 indoor and 8 outdoor) and sale and on-site consumption of beer and wine.

Location: 1417 N. Milpitas Blvd. (APN 22-02-009)

**RECOMMENDATION:** **Approval with Conditions**

Applicant: Francisco and Jesus Rodriguez, 1417 N. Milpitas Blvd., Milpitas, CA 95035

Property Owner: John and Melania Vali, 5610 Country Club Parkway, San Jose, CA 95138

Previous Action(s): "S" Zone Approval and amendments

Environmental Info: Exempt

General Plan Designation: Highway Service

Present Zoning: Highway Service "HS" District

Existing Land Use: Restaurant

Agenda Sent To: Applicant and owner (both noted above)

Attachments: Site and floor plans, applicant's letter of description dated November 7, 2003, Resolution No. 449

PJ No. 2361

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## BACKGROUND

On December 11, 1963 the Planning Commission approved an "S" Zone Application for a 1,200 square foot building and associated site improvements including a parking lot, landscaping and a freestanding pole sign for a Dairy Belle Drive-In restaurant. On November 26, 2002, Planning staff approved interior upgrades and site improvements (new trash enclosure and landscaping) for a new business, Taqueria Las Vegas.

A temporary occupancy permit was issued to allow the business to begin operating while the applicant worked with the City to obtain Building and Planning permits for roof-top equipment that was installed without the benefit of permits. An extension of the temporary occupancy permit was issued to allow further structural analysis of the building and its ability to accommodate the new equipment and required screening. A building permit was issued on December 8, 2003 for the rooftop equipment, roof screen and associated seismic/wind resistance upgrades to the existing building. Building and Planning staff have been working closely with the applicant and are confident the work will be completed and inspection approvals received prior to the expiration of the temporary occupancy permit on February 15, 2004.

## Site Description

The subject site is located on the west side of N. Milpitas Blvd., just north of Minnis Circle. Jacklin Blvd. lies to the south, Dixon Landing to the north and the Union Pacific Railroad line to the west. Surrounding zoning includes Highway Service to the south and Single Family residential and Mobile Home Park to the east and north. Neighboring uses include auto repair and similar auto uses to the south off Minnis Circle and some to the north. The Minnis office building lies to the immediate south and commercial retail centers lie further north.

The subject site is accessed from a driveway on N. Milpitas Blvd. The building resides on the northern side of the parcel, with landscape planters along the property's perimeter. Within the parking lot area at the southwest corner is a new trash enclosure.

## THE APPLICATION

This Use Permit application is submitted pursuant to Section 21.03-10 (restaurant that includes the on-premise consumption of alcoholic beverages as a conditional use in the Highway Service "HS" District) and Section 57 (Conditional Use Permits) of the Milpitas Zoning Ordinance.

The applicant requests to add the sale on-site consumption of beer and wine to the existing restaurant at 1417 N. Milpitas Blvd. During the processing of the application for the beer and wine request, it was discovered the restaurant use is legal non-conforming because a use permit was never processed for the restaurant. The restaurant was established in 1963, prior to the use permit requirement for such establishments, hence the use permit application rather than a use permit amendment. This staff report includes an overview of the use and not just the request for the addition of beer and wine sales.

The restaurant, Taqueria Las Vegas, serves both lunch and dinner for dining-in and take-out. It operates 7 days a week between the hours of 8 AM and 10 PM. As noted on the site and floor plan, the restaurant is approximately 1,512 square feet with a kitchen and service counter,

restroom, cooler and dining areas both inside and out. The total number of seats is 28 (20 inside and 8 outside). The parking lot area consists of a new trash enclosure with landscaping and 33 parking spaces.

### **Conformance with the General Plan and Zoning Ordinance**

The proposed project complies with the City's General Plan in terms of land use. The proposed use does not conflict with any General Plan Principles and Policies, and is consistent with Implementing Policy 2.1-I-3, which encourages economic pursuits that will strengthen and promote development through stability and balance. It is also consistent with Policy 2.a-I-6, which endeavors to maintain a balanced economic base that can resist downturns in any one economic sector.

The proposed project is located in the Highway Service "HS" zoning district. Part of this district's purpose and intent is to provide for a wide range of personal and business services related to the auto and transient residential uses. The proposed restaurant does not conflict with the intent of this district and consistent with its purpose in that the restaurant would serve the patrons of the auto uses as well as the nearby residential community on the east side of N. Milpitas and to the north.

### **ISSUES**

#### **Seats and Parking**

The site currently has 33 parking spaces. Due to its original use as a drive-in restaurant, the site was built with excess parking. The parking area was upgraded with the tenant improvement in November of 2002 to include adequate handicap stalls and was also re-striped. Based on the parking schedule for restaurants which are of the fast food and take-out type, Section 53.23-2 (7), the 28 seats proposed would require 11 spaces (1 space per 2.5 seats) and the 66 square foot take-out area would require 1 space (1 space per 50 square feet). The total 12 parking spaces needed for the proposed use will not exceed the 33 spaces existing on-site and therefore no impact on parking is anticipated.

#### **Conformance with the Outdoor Seating Resolution No. 449**

The proposed project is consistent with the applicable guidelines for outdoor seating that are established in Resolution No. 449. The outdoor seats consists of two (2) permanent sturdy aluminum tables with attached benches in front of the restaurant entrance. The table and seating do not impede any pedestrian movement or interfere with parking or loading and service areas. **Staff recommends** carrying over several guidelines in the form of conditions of approval that will assist in the continued maintenance of the outdoor seating area. Staff does not recommend imposing a 6-month review for the outdoor seating, as required by No. 16 of the guidelines. Site visits have confirmed consistency with the guidelines, therefore, staff concludes that no further review is necessary. Should any future concerns arise with the outdoor seating, staff will work with the applicant to ensure conformance.

### **Alcohol Sales and Consumption**

The sale and consumption of beer and wine is not expected to create any negative impacts since the restaurant hours are not proposed to exceed 10:00 PM on any day. In addition, the Milpitas Police Department does not anticipate any alcohol-related issues with this site.

### **Odors, Waste, Urban Runoff Management**

The new solid waste enclosure, which is connected to the sanitary sewer, is sufficient to handle the waste, both solid and liquid (grease), generated by the proposed use. However, there are potential impacts from waste generated by the restaurant that may produce odors if not properly handled or if spilled when transported to the on-site trash enclosure. In addition, urban runoff pollution may occur if food waste is spilled in the trash enclosure area and rainfall or other water washes it into the storm drains. Therefore, *staff recommends* special conditions addressing these potential impacts. These are similar conditions attached to other recent restaurant approvals in the City given the recent approval of new, stricter urban runoff-related requirements by the Santa Clara Valley Water District.

### **Neighborhood/Community Impact**

The proposed restaurant use would serve the adjacent auto-related and residential uses in the immediate area. The use and the outdoor seating has existed for numerous years with no odor or noise complaints and thus, no new noise or odor issues are expected. As conditioned, the proposed project is not anticipated to create any significant parking, traffic, odor, noise, or other adverse impacts on the community.

### **Conformance with CEQA**

The proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 ("Existing Facilities"—"... permitting, ... licensing ... of existing ... private structures ... involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination") of the California Environmental Quality Act (CEQA) Guidelines.

### **RECOMMENDATION**

Close the Public Hearing. Approve Use Permit No. UP2003-53 based on the Findings and Special Conditions of Approval listed below.

### **FINDINGS**

1. The proposed project is consistent with the General Plan in terms of land use and Policies 2.a-I-6 and 2.1-I-3, which encourage economic pursuit that strengthen and promote development and that can resist downturns in any one economic sector.
2. The proposed project is consistent with the Zoning Ordinance in that a restaurant, which includes on-premises consumption of alcoholic beverages, is a conditional use in the Highway Service "HS" District and that the restaurant would serve the patrons of the auto

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uses as well as the nearby residential community on the east side of N. Milpitas and to the north.

3. As conditioned, the proposed project will not be detrimental or injurious to the public health, safety, and general welfare of the surrounding community because the restaurant will not produce any adverse impacts on the community with respect to noise, odor, traffic, or parking.
4. The proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the State CEQA Guidelines.

### SPECIAL CONDITIONS

1. This Use Permit No. UP2003-53 is for a 1,512 square foot take-out style restaurant and with 20 indoor and 8 outdoor seats and 66 square foot of take-out area, as depicted on approved plans dated January 14, 2004. Any additional seats (indoor or outdoor), change in size of take-out area or changes to any of the conditions of approval require Planning Commission approval of an amendment to this Use Permit and a public hearing. Minor changes, as per Section 42.10-2 of the Milpitas Zoning Ordinance, to approved plans may be approved by the Planning Division staff. (P)
2. The maximum approved number of seats (indoor and outdoor) is 28. Prior to issuance of a *final* Certificate of Occupancy for this use, a sign measuring at least 8 1/2 inches by 11 inches shall be placed in a conspicuous location near the restaurant front entrance stating:

*"Maximum seats: 28, as per Use Permit No. UP2003-53 granted by the Planning Commission on January 14, 2003."*

The minimum letter height of "Maximum seats: 28" shall be at least 3/4 inch.

3. Prior to issuance of a *final* Certificate of Occupancy, the applicant shall submit to the Planning Division a program assigning restaurant staff responsibility for complying with the following guidelines. The solid waste collection/loading area for the restaurant shall adhere to the following guidelines in perpetuity. (P)
  - a) Keep garbage dumpsters clean inside and out; replace very dirty dumpsters with new, clean ones.
  - b) Double- or triple-bag waste to prevent leaking.
  - c) Place, do not drop or throw, waste-filled bags, to prevent leaking.
  - d) Keep the ground under and around the garbage dumpsters swept.
  - e) Sprinkle the ground lightly after sweeping with a mixture of water and a little bleach.
  - f) Keep garbage dumpsters inside the approved enclosure and away from residential properties. Enclosure gates shall be kept closed.



4. Prior to issuance of a *final* Certificate of Occupancy, plans shall show the following: signage to be installed in the work areas (minimum 2 locations visible to employees), the business owner shall post signs (in English and in one of the following other languages: Vietnamese, Chinese, Filipino, Spanish or other applicable language) which identify procedures for the food delivery and disposing of garbage as outlined above. (P)
5. The business owner shall hold training sessions to instruct their employees on the proper procedures in the handling and disposal of food items; the general maintenance and use of the garbage bins and any other procedures that would assist the business in complying with all state and local health and sanitation standards (refer to the County of Santa Clara Department of Environmental Health at (408) 729-5155 for their guidelines). (P)
6. Prior to the issuance of a *final* Certificate of Occupancy, the business owner shall submit an outline of the format and number of training sessions to the Planning Division to address training in preparation for opening, for new employees, and for annual recurring training for the handling and disposal of food items. (P)
7. Washing of containers and equipment shall be conducted in the kitchen area such that wash water may drain into the sanitary sewer. (P)
8. All tenant garbage carts and bins shall be stored in the garbage enclosure in perpetuity and shall be maintained clean by double-bagging garbage and by frequent sweeping and disposal of any spilled solid waste. (P)
9. This use shall be conducted in compliance with all appropriate local, state, and federal laws and regulations and in conformance with the approved plans. (P)
10. As per Resolution No. 449, the following shall be maintained in perpetuity:
  - a) All tables shall be cleaned after the diners have vacated the premises;
  - b) A trash receptacle shall be located in the general vicinity of the outdoor seats;
  - c) All tables, seats and umbrellas shall be uniform in design, sturdy and be of durable quality and relatively maintenance free; and
  - d) The minimum 4-foot aisle-ways shall be maintained at all times and shall not be obstructed with tables chairs or trash receptacles. (P)
11. The property owner/manager shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI for commercial services:
  - a) An adequate level of service for trash collection.
  - b) An adequate level of recycling collection.
  - c) Applicant shall maintain a tallow account inside the enclosure and keep the tallow bins clean. Please contact Leslie Stobbe at (408) 586-3352.

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After the applicant has started its business, BFI commercial representative shall determine the adequacy of the solid waste level of services. If services found to be inadequate, the property owner/manager shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234, x-264. (E)

12. The developer shall submit a Sewer Needs Questionnaire and/or Industrial Waste Questionnaire with the building permit application and pay the related fees prior to Building Permit issuance by the Building Division. Contact the Land Development Section at (408) 586-3329 to obtain the form(s). (E)

(P) = Planning Division

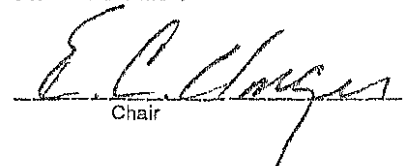
(E) = Engineering Department

10. All tables shall be cleaned after the diners have vacated the premises.
11. Umbrellas used in conjunction with tables shall have a clearance height so as not to hinder pedestrians. The use of umbrellas under eaves, canopies or overhangs is discouraged.
12. After the dining hour is completed, all tables, umbrellas, and chairs shall be removed from the pedestrian aisle and be placed (stacked, etc.) inside the restaurant. Storage in front of the business is not acceptable unless it is within an enclosed dining area.
13. A trash receptacle shall be located in the general vicinity of the outdoor seats.
14. All approved outdoor seating shall comply with the parking requirements of the zoning ordinance (similar to indoor seating).
15. Each table and seat shall show the name of the restaurant to which it belongs.
16. Approval of the Use Permit, to permit outdoor tables and seats, shall be subject to no less than a one time six month review by the Planning Commission to assure that the outdoor arrangements are meeting the applicable guidelines of this Resolution.

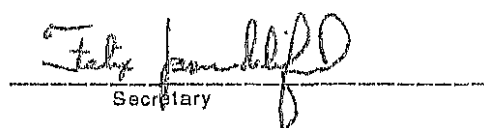
PAST AND ADOPTED this 10th day of November, 1993, by the following vote:

AYES:	Commissioners:	Brown, Ciardella, Dixon, Manayan, Spencer, Unger, Wong
NOES:	Commissioners:	None
ABSENT:	Commissioners:	None
ABSTAIN:	Commissioners:	None

APPROVED:

  
Chair

ATTEST:

  
Secretary

## RESOLUTION NO. 449

### A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING GUIDELINES FOR OUTDOOR SEATING AT RESTAURANTS

WHEREAS, the City Planning Commission regards the appearance of restaurants in the city as being important to the community, and its environs, and

WHEREAS, the City Planning Commission recognizes the desires of those businesses and patrons, to the restaurants, to have this type of outdoor service in addition to indoor seating, and

WHEREAS, the Planning Commission decrees that these guidelines are adopted in the interest of creating economic vitality architectural compatibility through design and maintaining the public's health and welfare; however, the spirit and intent of the guidelines is of utmost importance, and any restaurant seeking approval for outdoor seating will be reviewed using this resolution as a guide.

NOW, THEREFORE, BE IT RESOLVED that the following guidelines shall apply to those restaurants who have outdoor seating:

1. Wherever possible, outdoor seating areas shall be within an enclosed area. Fences or walls shall be compatible in style and material with the main structure on a site.
2. To avoid the monotony of long solid walls and fences around the perimeter of the outdoor seating area, variation in height, texture and color of the wall or fence is recommended.
3. Outdoor seating shall not encroach in front of any other business except that which the Use Permit applies.
4. Outdoor seats or other obstacles shall not interfere with any pedestrian movement within a shopping center and shall have aisle-ways a minimum of four (4 ) contiguous feet in width. It shall be the responsibility of the business to ensure that the minimum four (4) foot aisle-ways are maintained at all times.
5. Outdoor seats shall be separated from any pedestrian and automobile traffic paths and shall minimize conflict areas for safety.
6. Outdoor seats placement shall provide for walkways to connect adjacent parking lots to building entrances.
7. Outdoor seats shall not interfere with any designated bicycle parking area or facility.
8. Outdoor seating shall be located away from any service/loading areas.
9. All tables, seats and umbrellas shall be uniform in design, sturdy and be of a durable quality, and relatively maintenance free.



November 7, 2003

To Whom It May Concern:

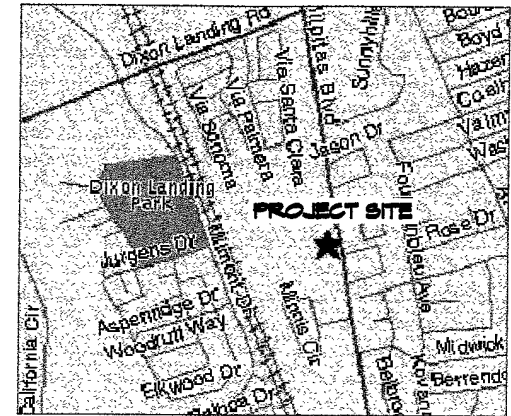
We are writing this letter with the intention of requesting a permit, which would allow us to sell Beer and Wine at our restaurant, Taqueria Las Vegas. We feel that if we are granted this license, we can compliment our food, as it has been the request of many of our customers. Our restaurant's menu consist of Mexican dishes, we offer a variety of soft drinks, however we would like the opportunity to be able to offer a variety to our customers. In the long run we too would benefit from this license, as it would increase our sales. We also understand that there are restrictions if we are given the privilege to sell Beer and Wine but we are willing to comply with any rules and standards that are asked of us. Our hours of operation are from 8 a.m. to 10 p.m. seven days a week. We are located at 1417 N. Milpitas Blvd., should you have any questions please feel free to call us at (408) 262-2415. We look forward to hearing from you.

Sincerely,

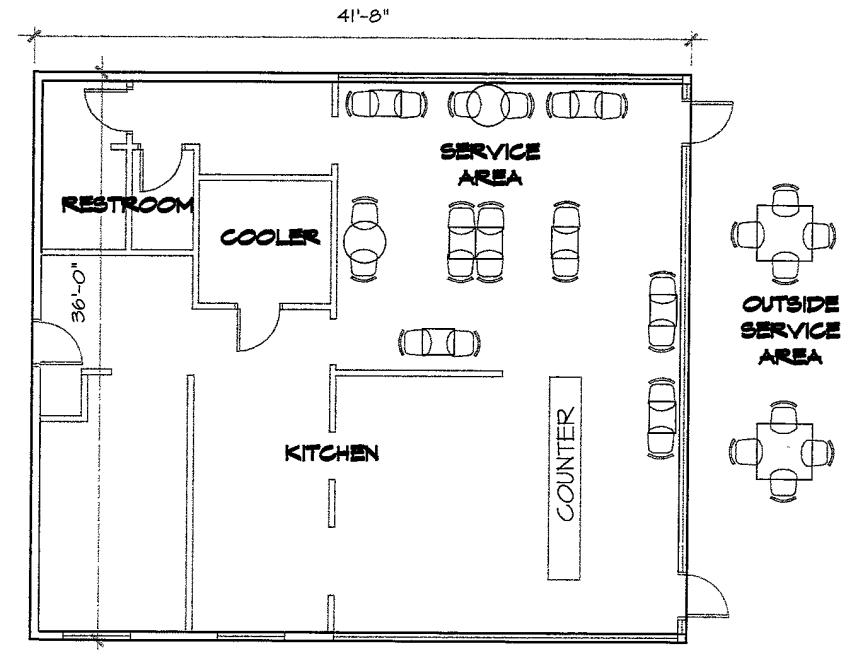


Francisco Rodriguez  
Restaurant Owner

1417 N. MILPITAS BLVD  
MILPITAS, CA 95035



### VICINITY MAP



(E) FLOOR PLAN

SCALE: 1/8"=1'-0"

